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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

SEDGWICK, LLP,

Debtor.

Case No.: _18-31087

Chapter 11

**MOTION PURSUANT TO SECTION
365(A) OF THE BANKRUPTCY CODE
FOR AN ORDER (I) AUTHORIZING THE
DEBTOR (A) TO REJECT UNEXPIRED
NON-RESIDENTIAL REAL PROPERTY
LEASES AND (B) TO ABANDON ANY
PERSONAL PROPERTY LOCATED AT
SUCH PREMISES, AND (II) FIXING A
BAR DATE FOR CLAIMS OF
COUNTERPARTIES**

Sedgwick LLP, the debtor and debtor in possession in the above-captioned case (the "Debtor") hereby submits this motion (the "Motion") for the entry of an order, pursuant to sections 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), (a) approving the rejection of the unexpired leases (the "Leases") of non-residential real property (the "Leased Premises") as specified on Exhibit A annexed hereto and the proposed order, (b) authorizing the Debtor to abandon any personal property located at the Leased Premises, and (c) fixing a bar date to file claims, if any, of the counterparty to the rejected Leases. In support of this Motion, the Debtors respectfully state as follows:

I.

JURISDICTION

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory bases for the relief requested herein are sections 105(a), 365, and 554(a) of the Bankruptcy Code and Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

II.

BACKGROUND

On the date hereof (the “**Petition Date**”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. As of December 31, 2017, the Debtor discontinued providing legal services as a law firm and on January 1, 2018, the Debtor by way of its dissolution committee commenced winding down the firm. In that context, the Debtor continues to operate its business and manage properties as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in this chapter 11 case, and no official committee has yet been appointed by the Office of the United States Trustee.

The factual background regarding the Debtor, including its current and historical business operations and the events precipitating the commencement of its chapter 11 case, is set forth in detail in the *Declaration of Gregory C. Read in Support of First Day Motions* (the “**Read Declaration**”) filed concurrently herewith and incorporated herein by reference.

III.

THE REJECTED LEASES

Because the Debtor discontinued providing legal services and commenced winding down the firm, the Debtor determined that it has no further use for the Leased Premises. In the Fall of 2017, the Debtor, through counsel, embarked on a process to terminate the Leases on terms that were mutually agreeable with respective landlords. In certain instances, the Debtor reached and entered

1 into termination agreements that were fully performed prior to the commencement of this case. In
2 other instances, the Debtor either entered into lease termination agreements that were not fully
3 performed or had not formally terminated the lease. The Debtor, however, turned over and removed
4 any personal property of value from all of the Leased Premises well before the Petition Date. As of
5 the Petition Date, the Debtor is no longer occupying any of the Leased Premises. However, certain
6 subtenants might be using certain of the Leased Premises. For the avoidance of doubt, the Leases
7 subject to this Motion include all of the subleases that the Debtor was party to as of the Petition
8 Date. In the end, the Debtor is seeking to reject the Leases to ensure that no administrative claims
9 accrue after the Petition Date.

10 Therefore, the Debtor, in the exercise of its business judgment, has determined to reject the
11 Leases for each of the Leased Premises as described in **Exhibit A** annexed hereto, effective as of the
12 Petition Date, October 2, 2018 (the “**Rejection Effective Date**”):

13 **IV.**

14 **RELIEF REQUESTED**

15 By this Motion, the Debtor seeks the entry of an order (a) approving the rejection of the
16 Rejected Leases, identified above and on **Exhibit A** annexed hereto, effective on the Rejection
17 Effective Date, (b) authorizing the Debtor to abandon any personal property located at the Leased
18 Premises on the Rejection Effective Date, and (c) fixing a bar date for claims arising from the
19 rejection, if any, of the counterparties.

20 **V.**

21 **BASIS FOR RELIEF REQUESTED**

22 **A. Rejected Leases**

23 Section 365(a) permits a debtor to assume or reject an executory contract or unexpired lease
24 upon the authority of the Court after notice and a hearing. The question of whether a contract or
25 lease should be rejected, and, if not, on what terms it should be assumed, is one of business
26 judgment. *See Group of Institutional Investors v. Chicago, Milwaukee, St. Paul and Pacific R. Co.*,
27 318 U.S. 523, 550 (1943), rehearing denied, *Group of Institutional Investors v. Abrams*, 318 U.S.
28 803 (1943). Under the Bankruptcy Code, most courts have applied the business judgment test to the

1 decision to assume or reject a contract or lease. *See Orion Pictures Corp. v. Showtime Networks,*
2 *Inc. (In re Orion Pictures Corp.),* 4 F.3d 1095, 1099 (2d Cir. 1993); *Richmond Leasing Co. v.*
3 *Capital Bank N.A.,* 762 F.2d 1303 (5th Cir. 1985); *see also Agarwal v. Pomona Valley Med. Group,*
4 *Inc. (In re Pomona Valley Med. Group, Inc.),* 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor*
5 *Corp. (In re G.I. Indus., Inc.),* 204 F.3d 1276, 1281 (9th Cir. 2000) (“a bankruptcy court applies the
6 business judgment rule to evaluate a trustee’s rejection decision”). The Ninth Circuit Bankruptcy
7 Appellate Panel has stated the standard by which debtors should exercise their business judgment as
8 follows: “What are the criteria which the court and the trustee [debtor in possession] should
9 legitimately consider in exercising their ‘business judgment?’ The primary issue is whether
10 [assumption or] rejection would benefit the general unsecured creditors.” *Robertson v. Pierce (In re*
11 *Chi-Feng Huang),* 23 B.R. 798, 801 (9th Cir. B.A.P. 1982).

12 It is settled in the Ninth Circuit that a bankruptcy court may approve retroactive rejection of
13 executory contracts or unexpired leases. In *In re At Home Corp.,* 392 F.3d 1064, 1065 (9th Cir.
14 2004), the Ninth Circuit held, in approving rejection of a nonresidential property lease, that
15 retroactive rejection is within a bankruptcy court’s equitable powers “when ‘necessary or appropriate
16 to carry out the provisions of’ § 365(d).” *Id.* at 1071; *see also* 10 COLLIER ON BANKRUPTCY ¶
17 6006.01[3] (16th ed. rev. 2011) (noting that the “new majority view” is to allow “retroactive
18 application of an order of rejection, back to the date that the motion was filed, based on equitable
19 considerations.”).

20 The Debtor seeks to reject the Leases, in accordance with principles of sound business
21 judgment, based on the belief that the Debtor no longer occupies any of the Leased Premises and
22 could not provide any benefit to the Debtor or its estate. Thus, if the Leases were not terminated
23 prior to the Petition Date, they would burden the Debtor and its estate if they would accrue
24 unnecessary administrative expense claims without any corresponding benefit. As set forth above,
25 the Debtor has no further use for the Leased Premises and the Leases no longer provide any
26 economic benefit to the Debtor in connection with wind down of the firm, and the Debtor turned
27 over possession of the Leased Premises well before the Petition Date.
28

1 Additionally, the Debtor has determined, in its reasonable business judgment, that there is no
2 net benefit that can be realized from an attempt to market and assign the Leases for more than one
3 reasons: (a) the Debtor would have to pay rent while it marketed the sale and assignment of the
4 Leases and (b) the Debtor is no longer in possession of any the Leased Premises so it would be
5 impossible to assume and assign the Leases in exchange for any benefit. Plus, there is no guarantee
6 the Debtor would find an acceptable assignee and the Debtor believes it is more prudent to reject the
7 Leases immediately so that cash is not needlessly used for what could otherwise be used to fund this
8 administration of this case and distributions to general unsecured creditors.¹ As a result, the Debtor
9 has determined that the cost of performing their obligations under the Rejected Lease and incurring
10 unnecessary administrative expenses will exceed any realistic sales price. Thus, the Debtor submits
11 that rejection of the Leases is in the best interests of the Debtor's estate and creditors, and other
12 parties in interest.

13 Rejection of the Leases, as proposed herein, is well within the business judgment rule and
14 will benefit the estate. The Leased Premises have been vacated and are of no further use to the
15 Debtor. Rejection will benefit the estate because it frees it from burdensome obligations that do not
16 promote a successful reorganization of the Debtor. *National Labor Relations Board v. Bildisco &*
17 *Bildisco*, 465 U.S. 513, 528, 104 S. Ct. 1188, 1997 (1984); *see also In re Rega Properties, Ltd.*, 894
18 F.2d 1136, 1140 (9th Cir. 1990).

19 The Debtor may have claims against the counterparties to the Leases arising under, or
20 independently of, the Leases. The Debtor does not waive such claims by the filing of this Motion or
21 by the rejection of the Leases.

22 **B. Abandonment of Personal Property**

23 In addition, the Debtor seeks authority to abandon any owned personal property located at
24 the Leased Premises on the Rejection Effective Date, as is, where is, in accordance with section
25 554(a) of the Bankruptcy Code. Section 554(a) provides that "[a]fter notice and a hearing, the
26

27 _____
28 ¹ The Debtors reserve all of their rights with respect to the determination of whether the Rejected Lease has been or will
have been terminated or breached. In either event, the Debtors do not believe that assumption of the Rejected Lease is in
the best interests of their estates or their creditors and thus seek to reject the Rejected Lease pursuant to this Motion.

1 trustee may abandon any property of the estate that is burdensome to the estate or that is of
2 inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a).

3 Prior to the Debtor’s prepetition abandonment of the Leased Premises, the Debtor removed
4 any personal property that had value (including all client files) and returned any leased equipment or
5 property owned by third parties. The Debtor believes that the costs associated with liquidating any
6 personal property assets remaining at the Leased Premises on the Rejection Effective Date will likely
7 approach or exceed the value of such assets. Accordingly, the Debtor believes that the personal
8 property at the Leased Premises, if any, has inconsequential value to the estate and should be
9 abandoned as of the Rejection Effective Date.

10 **C. Claims Bar Date**

11 As set forth above, the counterparties may seek to assert a rejection damage claim under
12 section 502 of the Bankruptcy Code or other claims in connection with the Rejected Leases. The
13 Debtor further request by this Motion that the Court fix a claims bar date with respect to the Rejected
14 Leases the later of (a) twenty-eight (28) days after the entry of an order granting the relief requested
15 in this Motion or (b) the deadline set by the Court to file claims against the Debtor’s estate.

16 Bankruptcy Rule 3003(c)(3) provides: “[t]he court shall fix . . . the time within which proofs
17 of claim may be filed.” Bankruptcy Rule 2002(a)(7) requires at least twenty-one (21) days notice by
18 mail of the time fixed for filing proofs of claim and interest pursuant to Bankruptcy Rule 3003(c)(3).

19 The Debtor requests that the Court, in accordance with Bankruptcy Rule 3003(c)(3), establish
20 a bar date by which the counterparties to the Leases must file any claims the later of (a) twenty-eight
21 (28) days after the entry of an order granting the relief requested in this Motion or (b) the deadline
22 set by the Court to file claims against the Debtor’s estate.

23 The Debtor will give notice of such bar date to the counterparties by service of any order
24 approving this Motion and fixing such bar date. The Debtor will serve such order within three (3)
25 business days of its entry, thereby satisfying the requirements of Bankruptcy Rule 2002(a)(7). The
26 Debtor reserves any and all rights to object to any rejection damage claims or any other claims filed
27 by the Counterparty.
28

VI.

NOTICE

Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Northern District of California (San Francisco Division), (b) creditors holding the twenty largest unsecured claims against the Debtor as identified in the Debtor's petition, or their legal counsel (if known); (c) the counterparties to the Leases, or their counsel if known; and (d) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

VII.

NO PRIOR REQUEST

No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as **Exhibit B**, (a) approving the rejection of the Leases, identified in **Exhibit A** annexed hereto and the proposed order, effective on the Rejection Effective Date, (b) authorizing the Debtors to abandon any personal property located at the Leased Premises on the Rejection Effective Date, (c) fixing a bar date for claims, if any, of the counterparty to the Leases the later of (a) twenty-eight (28) days after the entry of an order granting the relief requested in this Motion or (b) the deadline set by the Court to file claims against the Debtor's estate, and (d) granting such other and further relief as the Court deems appropriate.

Dated: October 2, 2018

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ John W. Lucas
John W. Lucas

Proposed Attorneys for Sedgwick, LLP

EXHIBIT A

(Rejected Leases)

Leased Premises	Counter Party	Rejection Effective Date
801 South Figueroa 17 th , 18 th , and 19 th Floors Los Angeles, CA 90017 (Primary Lease)	CPF 801 Tower, LLC c/o Barings LLC 2321 Rosecrans Ave. Suite 4225 El Segundo, CA 90245 Sheppard Mullin Richter & Hampton LLP Attn: Alan M. Feld 333 South Hope Street, 43rd Floor Los Angeles, CA 90071-1422 AFeld@sheppardmullin.com Bio Jeff Hermann Orrick, Herrington & Sutcliffe LLP 777 South Figueroa St., Ste. 3200 Los Angeles, CA 90017-5855 Fax: 213.612.2499 Email: jhermann@orrick.com	
801 South Figueroa Portion of 18 th Floor, Ste. 1850 Los Angeles, CA 90017 (Sublease)	Kathy A. Dockery, Chapter 13 Trustee 801 South Figueroa Street, Suite 1850 Los Angeles, California 90071	
North Tower 2900 K Street, N.W. Suite 500 Washington D.C. 20007 (Primary Lease)	Lano/Armada Harbourside, L.L.C. 222 Central Park Avenue Suite 2100 Virginia Beach, VA 23462 John D. McIntyre Wilson & McIntyre 101 West Main Street, Suite 920 Norfolk, VA 23510 Fax: 757.961.3966 Email: jmcintyre@wmlawgroup.com	
North Tower 2900 K Street, N.W. Portion of 5 th Floor Washington D.C. 20007 (Sublease)	Cowen Group, Inc. 2900 K Street NW Washington, D.C. 20007	

EXHIBIT B

(Proposed Order)

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

SEDGWICK, LLP,

Debtor.

Case No.: 18-31087

Chapter 11

**ORDER (I) AUTHORIZING THE
DEBTORS (A) TO REJECT UNEXPIRED
NON-RESIDENTIAL REAL PROPERTY
LEASES AND (B) TO ABANDON ANY
PERSONAL PROPERTY LOCATED AT
SUCH PREMISES, AND (II) FIXING A
BAR DATE FOR CLAIMS OF
COUNTERPARTIES**

Upon the *Motion Pursuant to Section 365(a) of the Bankruptcy Code for an Order (I) Authorizing the Debtors (a) to Reject Unexpired Non-Residential Real Property Leases and (b) to Abandon any Personal Property Located at Such Premises, and (II) Fixing a Bar Date for Claims of Counterparties* [Docket No.](the "Motion")¹ of the above-captioned debtor and debtor in possession (the "Debtor"); and it appearing that the relief requested is in the best interests of the Debtor's estate and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefor;

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. The Leases listed on **Exhibit A** attached hereto are rejected effective October 2, 2018.

3. The Debtor is authorized to abandon any personal property located in the Leased Premises underlying the Leases pursuant to section 554(a) of the Bankruptcy Code.

4. The Debtor shall serve this Order on the counterparties to the Leases within three (3) business days of the entry of this Order.

5. The later of (a) twenty-eight (28) days after the entry of an order granting the relief requested in this Motion or (b) the deadline set by the Court to file claims against the Debtor's estate is hereby fixed as the bar date by which the Counterparty must file a claim under section 502 of the Bankruptcy Code or other claims in connection with such rejected Leases or the rejection, breach, or termination of such Leases, failing which such claim(s) shall be forever barred.

6. The Debtor reserves all rights to contest any rejection damages or any other claim(s) filed by the counterparties and to contest the characterization of the Leases as executory or not, and "true" contract or not, and to contest whether such Leases may have terminated prior to the Petition Date, or otherwise.

7. The Debtor does not waive any claims that they may have against the counterparties, whether or not such claims are related to the Leases.

8. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, or 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

***** END OF ORDER *****

EXHIBIT A

(Rejected Leases)